SUPREME COURT OF INDIA

Commnr. of Income Tax, Nagpur

Vs.

Baba Saheb Kedar G.&P. Coop.Society Ltd.

C.A.No.258 of 2005

(S.H. Kapadia, H.L. Dattu and Deepak Verma JJ.)

03.12.2009

ORDER

Heard learned counsel on both sides.

1. In this batch of civil appeals, the assessee(s) is engaged in ginning and pressing of cotton for *State Cooperative Cotton Market Federation [`Federation(s)', for short]*. The assessee(s) receives income by way of ginning and pressing charges. The assessee(s) and the Federation(s) have entered into an Agreement which governs conditions of processing, ginning and pressing of cotton, fixation of processing rates and godown rent. The rates for ginning and pressing have been defined in the Agreement between the assessee(s) and the Federation(s).

2. A narrow question arises for determination, before us, in this batch of civil appeals filed by the Department is, whether the rate prescribed by the Agreement between the assessee(s) and the Federation(s) is a composite charge, as submitted by the assessee(s), or whether the said rate is exclusively for ginning and pressing de hors the godown rent? According to the assessee(s), the work undertaken by it is not merely processing, ginning and pressing of cotton but, in addition to the afore-stated activities, a facility is also provided by it for storage of bales in the godowns/warehouses owned by the assessee(s).

3. On the basis that the rate is a composite charge, the Department, during the relevant years, has been attributing an ad-hoc amount applying the rule of proportionality towards rental income. Each of these assessees are claiming fifty per cent of the total ginning and pressing charges receivable by the assessee(s) as rental income. In that connection, the assessee(s) is relying upon the judgement of the Bombay High Court in the case of *Commissioner of Income Tax vs. Bhandara Zilla Sahakari Kharedi Vikri Sangh Limited*[1]. On the other hand, it is the case of the Department that the assessee(s) has separately credited the godown rent to profit and loss account, hence, on their own showing, the rate under the Agreement with the Federation(s) is not a composite charge.

4. In the present case, it is not in dispute that the assessee(s) provides storage facilities to the members of the Federation(s) carrying on ginning and pressing activities. It appears from the record that, during the relevant years, the Department has been adopting an ad-hoc measure of attributing fifty per cent of the charges payable to the assessee(s) as rental income. In our view, the Department has failed to take into account number of factors, namely, the provisions of *Cotton Ginning and Pressing Factories Act, 1925*, the expenses incurred towards payment of labour charges, etc. The Department ought to have also examined the proportion of income accruing to the assessee(s) from storage facility vis-a- vis the income accruing to the assessee(s) from ginning and pressing activities. This exercise has not been done by the Department. The rule of fifty per cent cannot be applied as across the board principle. Ordinarily, we would have remitted the matter to the Assessing Officer but it would not be in the interest of justice to remit the cases now after almost fifteen years as it would be impossible for the Assessing Officer to decide the questions raised hereinabove. In each case, the Department will have to examine the total income of the assessee(s) and after applying the principle of proportionality, the Department has to determine as to how much should be allocated as rental income in the said composite charge. This norm would apply to future assessment years.

5. In view of what is stated hereinabove, these appeals filed by the Department are disposed of with no order as to costs.

[1]*212 I.T.R.124*